

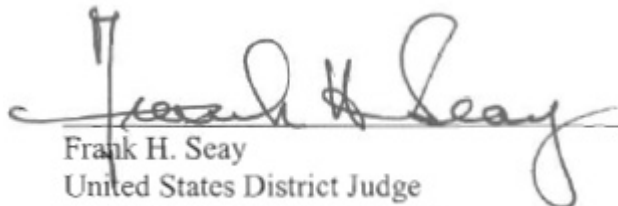
IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

DIANE MORRIS, individually and	)	
on behalf of the Estate of BILLY	)	
JOE PHILLIPS, deceased, and DALY	)	
A. PHILLIPS, deceased, minor,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. CIV-05-390-FHS
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
a foreign corporation,	)	
	)	
Defendant.	)	

**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Upon consideration of the motion for summary judgment filed herein by Defendant, Union Pacific Railroad Company, for judgment in its favor on validity of the release executed by Randall Phillips, the court concludes that genuine issues of material facts are present in the case including, but not limited to, whether material misrepresentations of fact were made by Defendant's representative. See generally Provident Life & Accident Ins. Co., 175 Okla. 282, 52 P.2d 763, 764-65 (Okla. 1935)(question of fraud is a jury issue where evidence of facts on issue of fraud exists) and Davis v. Higgins, 95 Okla. 32, 217 P. 193, 195 (Okla. 1923)(stating elements of actionable fraud to invalidate release). Summary judgment is therefore inappropriate and said motion should be overruled. Fed. R. Civ. P. 56; see, e.g., Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986).

It is so ordered this 18<sup>th</sup> day of December, 2006.

  
Frank H. Seay  
United States District Judge  
Eastern District of Oklahoma